IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 6735 of 2005(B)

AGAINST THE ORDER DATED / / IN IA.269/05 IN OS.159/2003 of M.C.,PARAPPANANGADI

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PETITIONER:

KOCHUTHUNDIL K.R. GOPALAN'S
SON G.THILAKAN, THIRURANGADI TALUK,
AYIRALLOOR AMSOM & DESOM

BY ADV. SRI.T.K.VENUGOPALAN

RESPONDENTS:

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1. EDAPPILLIL MATHEW'S SON JOSE,
ARIYALLUR AMSOM AND DESOM.

2. CHERUSSERI C.J.JOSEPH'S SON WILSON JOSE
ARIYALLUR AMSOM AND DESOM.

3. ALIS WILSON W/O. WILSON JOSE,
ARIYALLUR AMSOM AND DESOM.

4. MOOLASSERIL NANU'S DAUGHTER REVAMMA
ARIYALLUR AMSOM AND DESOM.

BY ADV. SRI.T.KRISHNAN UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

W.P(C) No. 6735 OF 2005

PETITONER'S EXHIBITS

Ext.P1: A true copy of the order in I.A. No. 269/2005 in O.S. 159/2003 of Munsiff's Court , Parappanangadi

//True copy/

es

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 6735 of 2005

Dated this the 2nd day of August , 2007

JUDGMENT

Ext.P1 order by which the learned Munsiff dismissed an application filed by the petitioner to remit the Commission report so that the commissioner can conduct measurement of the properties on the basis of the document Nos. 750/67, 416/1993 and 2250/95 is under challenge in this proceedings under Article 227 of the Constitution.

2. Heard both sides. According to the learned counsel for the petitioner, the Commissioner has not conducted any measurement on the basis of the three documents referred to above and the impugned order is passed mainly on the reason of delay and laches on the part of the petitioner.

3. Sri.Krishnanunni, the learned counsel for the respondents would submit that it is not necessary to grant the the prayers in the application since the Commissioner has already conducted measurement on the basis of the three documents. The Commission report was read over to me by Sri.Krishnaunni. It is seen from the Commission report that the commissioner had actually conducted

measurement of the properties on the basis of the document Nos. 750/67, 416/1993. In the case of the 3rd document also there is something to indicate that measurement was conducted by- the commissioner on the basis of that document also.

3. I do not find any warrant for setting aside the impugned order under this jurisdiction. I permit the petitioner to cross examine the commissioner when the suit goes for trial. After the entire evidence in the suit is recorded the learned Munsiff will hear the parties initially on the question whether it is necessary to remit the commission report and give his decision on that even before the judgment in the suit is delivered. Confirmation of Ext.P3 by this court will not stand in the way of the court remitting the commission report if the court becomes convinced, on the basis of the evidence adduced against the commission report, that there is justification for directing the commissioner to conduct measurement as the petitioner wants.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

dpk